



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1336

RIN 0970-AC88

Native American Programs

AGENCY: Administration for Native Americans (ANA), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking (NPRM) proposes changes to ANA regulations to allow grant recipients to apply for an emergency waiver of part or all of their proposed non-Federal share (NFS) due to emergency circumstances.

DATES: In order to be considered, written comments on this proposed rule must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number ACF-2021-004 and/or RIN number, by the following method:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions below for submitting comments.
- *Instructions:* All submissions received must include the agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Carmelia Strickland, Administration for Native Americans, 202-401-6741. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m. Eastern Time.

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I. Background

Native American Programs Act of 1974

The Native American Programs Act of 1974 (NAPA), Public Law 93-644, was first enacted on January 4, 1975. The last time substantial amendments to the NAPA regulations were made was 1996. Section 802 of the NAPA establishes as its broad statutory purpose the promotion of “the goal of economic and social self-sufficiency for American Indians, Native Hawaiians, other Native American Pacific Islanders (including American Samoan Natives), and Alaska Natives.” ANA executes this purpose through the provision of project-based financial assistance to Native Americans authorized under sections 803 and 803C of the NAPA, as well as through advocacy on behalf of Native Americans within HHS and with other departments and agencies of the

Federal Government “regarding all Federal policies affecting Native Americans,” under section 803B (c) of the NAPA.

Goal of This NPRM: Incorporation of Emergency Waiver Provision

Current regulations (45 CFR 1336.50) state that grant recipients can only apply for a waiver for NFS at the time of application or while applying for a non-competitive continuation award. The on-going public health emergency has greatly impacted our recipients. The pandemic has greatly increased the risk of language and cultural decline among Native communities with many Elders dying from the COVID-19 virus. As tribes began closing their revenue generating businesses and other governmental operations due to the COVID-19 pandemic, they lost income they needed to fund Federal projects requiring a NFS. In addition, planned sources of income, such as use of tribal-owned facilities from which to operate the project, as part of the NFS also diminished. NAPA requires a 20 percent cost-share and match requirement. ANA’s current cost-share waiver does not allow for a process to address a recipient’s inability to meet the cost-share due to an emergency in the middle of a budget period. The proposed revisions to the regulations (45 CFR 1336.50(b)(2)(ii)) add a provision allowing grant recipients to apply for an emergency waiver within the current budget period in order to remedy this burden.

II. Statutory Authority

Pursuant to 42 U.S.C. 2991b of the NAPA, ANA is authorized to allow applicants the ability to submit a request for a waiver of the required 20 percent non-Federal cost match, subject to ANA regulations.¹

III. Section by Section Discussion of the Proposed Rule

¹ Native American Programs Act, 42 U.S.C. 2991b

This NPRM proposes changes to 45 CFR part 1336, subpart E, Financial Assistance Provisions, in § 1336.50. These changes will have no regulatory burden impact but will provide a waiver provision and ensure programmatic success of American Indian, Native Hawaiian, other Native American Pacific Islander (including American Samoan Natives), and Alaska Native–based recipients.

Section 1336.50 Financial and Administrative Requirements.

This section includes the conditions that must be met in order to submit a 20 percent, non-Federal, cost-sharing or match requirement. The proposed rule would amend the existing language and application requirements under § 1336.50(b)(2). Specifically, we propose in § 1336.50(b)(2)(i) that if an applicant anticipates that they will be unable to meet the cost-sharing or matching requirement and wishes to request a waiver of the requirement, they must include with the application for funding, the submission of a revised SF 424A, a written justification that clearly explains why the applicant cannot provide the matching share including the amount of non-Federal share to be waived, and how it meets the criteria indicated in the revised § 1336.50(b)(3)(ii). The request for a waiver must be submitted at the time of the initial application or Non-Competing Continuation (NCC) application.

Further, the proposed rule adds a provision for an emergency waiver in § 1336.50(b)(2)(ii) to include the ability to request a waiver during the budget period. If a recipient is unable to contribute part or all of the required non-Federal matching share during a budget period due to an emergency situation such as a natural disaster, man-made disaster, act of terrorism, public health emergency, or other qualifying event, the recipient may request a waiver of all or part of the requirement for a 20 percent non-Federal matching share specified under § 1336.50(b)(1).

Finally, this proposed rule amends the language in § 1336.50(b)(3)(ii). We propose that an applicant should provide evidence of the emergency situation and document that reasonable

efforts to obtain cash or in-kind contributions for the purposes of the project from third parties have been unsuccessful, including evidence and the results of such attempts. Evidence of such efforts can include letters from possible sources of funding or any relevant correspondence, indicating that the requested resources are not available for that project. The requests must be appropriate to the source in terms of project purpose, applicant eligibility, and reasonableness of the request.

IV. Regulatory Process Matters

Paperwork Reduction Act of 1995

Section 1336.50(b) does not contain new information collection requirements. This action does not include any information collection requirements, only an additional circumstance that would allow for the submission of the information already outlined in the regulation.

Regulatory Flexibility Act

The Secretary certifies, under 5 U.S.C. 605(b), and enacted by the Regulatory Flexibility Act (Public Law 96, 354), that this proposed rule will not result in a significant impact on a substantial number of small entities.

Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing criteria specified in the law. This regulation will not have an impact on family well-being as defined in this legislation, which asks agencies to assess policies with respect to whether the policy strengthens or erodes family stability and the authority and rights of parents in the education, nurturing, and supervision of their children; helps the family perform its functions; and increases or decreases disposable income.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$141 million or more in any one year. The Department has determined that this proposed rule would not impose a mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year.

Federalism Assessment Executive Order 13132

Executive Order 13132 on federalism applies to policies that have federalism implications, defined as “regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the states, or on the distributions of power and responsibilities among the various levels of government.” This rulemaking does not have federalism implications for state or local governments as defined in the Executive order.

Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. 8.

Executive Orders 12866 and 13563 – Regulatory Impact Analysis

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select the regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting

flexibility. While there are some costs associated with these regulations, they are not economically significant as defined under Executive Order 12866. However, the regulation is significant and has been reviewed by Office of Management and Budget.

The proposed regulation change would benefit recipients that have been financially impacted by an emergency event and are unable to meet their matching cost requirement, as required by the grant award. It would reduce the financial burden to recipients that need a waiver to provide the 20 percent cost share. Also, there is no cost to the agency other than the administrative time that it would take to review and approve the waiver request.

List of Subjects in 45 CFR Part 1336

Disaster assistance, Emergency preparedness, Public health.

JooYeun Chang,
Acting Assistant Secretary for
Children and Families.

Approved:

Xavier Becerra,
Secretary.

For reasons stated in the preamble, we propose to amend 45 CFR part 1336 as follows:

PART 1336—NATIVE AMERICAN PROGRAMS

1. The authority citation for part 1336 continues to read as follows:

Authority: 42 U.S.C. 2991 et seq.

2. Amend § 1336.50 by revising paragraphs (b)(2) and (b)(3)(ii) to read as follows:

§ 1336.50 Financial and administrative requirements.

* * * * *

(b) * * *

(2) *Application.* If an applicant wishes to request a waiver of the requirement for a 20 percent non-Federal matching share, the follow conditions must be met:

(i) If an applicant anticipates that it will be temporarily unable to meet the cost-sharing or matching requirement, the applicant may request a waiver of the 20 percent non-Federal matching share. It must include with its application for funding, the submission of a revised SF 424A, a written justification that clearly explains why the applicant cannot provide the matching share including the amount of non-Federal share to be waived, and how it meets the criteria indicated in paragraph (b)(3) of this section. A request for a waiver must be submitted at the time of the initial application or non-competing continuation (NCC) application.

(ii) If a recipient is unable to contribute part or all of the required non-Federal matching share during a budget period due to an emergency situation such as a natural disaster, man-made disaster, act of terrorism, public health emergency, or other qualifying event, the recipient may request a waiver of all or part of the requirement for a 20 percent non-Federal matching share specified under paragraph (b)(1) of this section. Any requests for an emergency waiver may be submitted at any time during a budget period as soon as the adverse effect is known to the

recipient and must be submitted in accordance with the requirements specified in paragraph

(b)(3) of this section.

(3) * * *

(ii) Applicant should document the reasonable efforts to obtain cash or in-kind contributions for the purposes of the project from third parties have been unsuccessful, including evidence and the results of such attempts. Evidence of such efforts can include letters from possible sources of funding or any relevant correspondence, indicating that the requested resources are not available for that project. The requests must be appropriate to the source in terms of project purpose, applicant eligibility, and reasonableness of the request.

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